

REMARKS

Reconsideration and allowance of this application are respectfully requested in light of the foregoing amendments and the following remarks.

Claim Status

Claims 1-32 are currently pending in the application. Claims 9-10, 13-14, 25-26 and 29-30 have been amended. No new matter was added.

Claim Objections

Claims 9, 10, 13, 14, 25, 26, 29 and 30 stand objected to because of an informality. Applicant has made the changes suggested by the Examiner (changing "°c" to "°C") and respectfully requests that the objection to these claims be removed and the claims allowed.

§112 Rejection

Claims 12 and 28 stand rejected under 35 USC § 112, second paragraph.

The Office avers that the Applicant's use of the term "freshly coated" is relative and renders the claim indefinite. Applicant traverses. Applicant respectfully disagrees with these rejections as M.P.E.P. §2111.01 clearly states that:

During examination, the claims must be interpreted as broadly as the terms allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 U.S.P.Q.2d 1827, 1834 (Fed. Cir. 2004)... This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 U.S.P.Q.2d 1320, 1322 (Fed. Cir. 1989); *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1372, 69 U.S.P.Q.2d 1857 (Fed. Cir. 2004) (Ordinarily, simple English words whose meaning is clear and unquestionable, absent any indication that their use in a particular context changes their meaning, are construed to mean exactly what they say.

Referring to the dictionary definitions from *Webster's New Twentieth Century Dictionary, 2nd Edition* (1983) and *Webster's Third New International Dictionary* (1993) which are included with this submission, the term "freshly" is defined as "recently; just now; newly and in a fresh manner". (See attached submission). Based on the dictionary definitions, and the knowledge of one of ordinary skill in the art, a person of ordinary skill in the art would be reasonably apprised that the scope of the invention would include a battery separator which was newly or recently coated with a polymer and first and second surfactant combination. In light of this information, Applicant respectfully requests that the rejection of these claims under 35 USC § 112 be removed and the claims allowed.

35 USC § 103 Rejection

Claims 1-32 stand rejected under 35 USC §103(a), as being unpatentable over Taskier (US 4,298,666) in view of Buntin (US

3,811,957). Applicant traverses. The rejection of claims 1-32 as unpatentable over Taskier in view of Buntin must fail because all elements of the invention are not disclosed. Specifically, neither Taskier nor Buntin mention "said second surfactant which is an oxirane polymer ...". Thus, claims 1-32 are not unpatentable over Taskier in view of Buntin and should be allowed.

Claims 1-32 also stand rejected under 35 USC §103(a), as being obvious over Wensley (US 6,479,190) in view of Taskier (US 4,298,666). Applicant traverses. The rejection of claims 1-32 as obvious over Wensley in view of Taskier must fail because all elements of the invention are not disclosed. Specifically, neither Wensley nor Taskier mention "said second surfactant which is an oxirane polymer ...". Thus, claims 1-32 are not obvious over Wensley in view of Taskier and should be allowed.

Claims 1-32 also stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of Wensley (US 6,479,190) in view of Taskier (US 4,298,666). Applicant traverses. In *In re Longi*, the Federal Circuit discussed the similarity between rejections under §103 and "obviousness-type" double patenting:

We note that the Board did not make the instant rejections under §103. However, a double patenting of the obviousness type rejection is "analogous to [a failure to meet] the non-obviousness requirement of 35

U.S.C. §103," except that the patent principally underlying the double patenting rejection is not considered prior art. *In re Braithwaite*, 379 F.2d 594, 600, n.4, 54 C.C.P.A. 1589, 1597, n.4, 154 U.S.P.Q. 29, 34 (1967). Therefore, our analysis concerning the correctness of the Board's decision in the instant case parallels our previous guidelines for a §103 rejection.

See, e.g., *In re De Blauwe*, 736 F.2d 699, 222 U.S.P.Q. 191 (Fed. Cir. 1984). *In re Longi*, 759, F.2d at 892 n.4, 225 U.S.P.Q. at 648 n.4.

Rather than file a terminal disclaimer, an applicant may overcome an obviousness-type double patenting rejection by arguing that the rejected claims are patentably distinct from the claims of the patent that is the bases of the rejection. *General Foods Corp. v. Studiengesellschaft Kohle MbH*, 972 F.2d 1272, 1278, 23 U.S.P.Q.2d 1839, 1843 (Fed. Cir. 1992); *In re Borah*, 354 F.2d 1009, 1018-19, 148 U.S.P.Q. 213, 221 (C.C.P.A. 1966). Overcoming the double patenting rejection "on the merits," in essence, means that the rejected claims need to be shown to be unobvious in view of the claim(s) upon which they were rejected. See *id.*

As stated previously, the rejection of claims 1-32 as unpatentable over Wensley in view of Taskier must fail because all elements of the invention are not disclosed. Specifically, neither Wensley nor Taskier mention "said second surfactant which is an oxirane polymer ...". Thus, claims 1-32 are not unpatentable over Wensley in view of Taskier and should be allowed.

Conclusion

In view of the foregoing, Applicant respectfully requests an early Notice of Allowance in this application.

Respectfully submitted,



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Simon & Schuster Building
Rockefeller Center
1230 Avenue of the Americas
New York, New York 10020
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Dictionary Editorial Offices
New World Dictionaries
850 Euclid Avenue
Cleveland, Ohio 44114

Manufactured in the United States of America

K 20 19 18 17 16 15 14 13 12

Library of Congress Catalog Card Number: 83-42537

ISBN 0-671-41819-X

Previous editions of this book were published by The World Publishing Company,
William Collins + World Publishing Co., Inc.
and William Collins Publishers, Inc.

or controls its motion, as the fold under the tongue; also spelled *fraenum*.

2. a characteristic ridge upon some insects.

fren'zi-căl, *a.* frenzied. [Obs.]

fren'zied, *a.* wildly excited; frantic.

fren'zied-ly, *adv.* madly; distractedly.

fren'zy, *n.*; *pl.* **fren'zies**, [ME. *frensy*, *frenesy*; OFr. *frenesie*; L. *phrenesie*, Gr. *phrenitis*, madness, inflammation of the brain, from *phrên*, mind.] wild excitement; frantic outburst; brief delirium that is almost insanity.

fren'zy, *a.* passionate; madly excited. [Obs.]

fren'zy, *v.t.*; *frenzied*, *pt.*, *pp.*; *frenzying*, *ppr.* to fill with frenzy; to make frantic.

fré'on, *n.* [fluorine, and refrigerant, and -on as in *neon*, etc.] a colorless gas, CClF₃, used especially as a refrigerant; a trade-mark (*Freon*).

fré'quence, *n.* [Fr. *fréquence*; L. *frequentia*, a throng, crowd, from *frequens* (-entis), crowded.]

1. a crowd; a throng; a concourse; an assembly. [Obs.]

2. same as *frequency*.

fré'quen-cy, *n.*; *pl.* **fré'quen-cies**, 1. originally, (a) the condition of being crowded; (b) a crowd.

2. the fact of occurring often or repeatedly; frequent occurrence.

3. the number of times any action or occurrence is repeated in a given period.

4. in mathematics and statistics, (a) the ratio of the number of actual occurrences to the number of possible occurrences in a given period; (b) the ratio of the number of individuals occurring in a specific class to the total number of individuals under survey.

5. in physics, (a) the number of vibrations or cycles per unit of time; (b) the number of cycles per second of an alternating electric current.

fré'quen-cy mod-ū-lā'tion, 1. the changing of the frequency of the transmitting radio wave in accordance with the sound being broadcast.

2. broadcasting that uses this, characterized by freedom from static and more faithful reproduction of sound.

Distinguished from *amplitude modulation*.

fré'quent, *a.* [Fr. *fréquent*, from L. *frequens* (-entis), crowded, repeated.]

1. often seen or done; happening at short intervals; often repeated or occurring; as, we made *frequent* visits to the hospital.

2. accustomed often to practice anything; as, he was *frequent* and loud in his declamations against the revolution.

3. full; crowded; thronged. [Obs.]

4. told often; of common report. [Obs.]

5. constant; habitual.

Syn.—many, repeated, numerous, recurrent, general, continual, usual, common, recurring.

fré'quent', *v.t.*; *frequented*, *pt.*, *pp.*; *frequenting*, *ppr.* [Fr. *fréquenter*, from L. *frequenter*, to fill, crowd, visit often, from *frequens*, crowded, frequent, repeated.] to visit often; to be at or in habitually; as, they *frequent* the theater.

He *frequented* the court of Augustus. —Dryden.

fré'quent'ā-ble, *a.* accessible.

fré'quent'ā-ge, *n.* the practice of frequenting. [Rare.]

fré'quen-tā'tion, *n.* the act or practice of frequenting.

fré'quent'ā-tive, *a.* [LL. *frequentativus*, frequentative; from *frequentare*, to do or make use of frequently.] in grammar, denoting the frequent repetition of an action; as, a *frequentative* verb.

fré'quent'ā-tive, *n.* a verb which denotes the frequent occurrence or repetition of an action.

fré'quent'er, *n.* one who frequents; a constant visitor.

fré'quent-ly, *adv.* often; many times; at short intervals; commonly.

fré'quent-ness, *n.* the quality of being frequent or often repeated.

frère (frâr), *n.* [Fr.] 1. a brother. 2. a friar.

fres'cā-de, *n.* [OFr. *frescade*, *fresquade*, from It. *fresco*, fresh, cool.] a cool walk; a shady place.

fres'cō, *n.*; *pl.* **fres'cōes**, **fres'cōs**, [It. *fresco*, fresh, cool, as noun, coolness, freshness, from O.H.G. *frisc*, fresh.]

1. coolness; shade; a cool, refreshing state of the air. [Obs.]

2. the art or technique of painting with water colors on wet plaster.

3. a picture or design painted by the above method.

in *fresco*; with water colors on wet plaster.

fres'cō, *v.t.*; *frescoed*, *pt.*, *pp.*; *frescoing*, *ppr.* to paint in fresco.

fresh, *a.*; *comp.* **freshier**; *superl.* **freshest**, [ME. *fresh*, *fresch*, from AS. *fersc*, fresh; D. *versch*; O.H.G. *frisc*; Ice. *ferskr*; Sw. *frisk*; Dan. *frisk*.]

1. brisk; strong; said of the wind.

2. having the color and appearance of youth; lively; as, a *fresh* complexion.

3. new; recently grown or produced; as, *fresh* vegetables; newly laid; as, *fresh* eggs.

4. recently made or obtained; as, a *fresh* supply of goods from the factory.

5. not impaired by time; not forgotten or obliterated; as, the ideas are *fresh* in my recollection.

6. not salt; said of water.

7. recently drawn; pure and cool; not warm or vapid; as, a glass of *fresh* water.

8. original, spontaneous, and stimulating; as, the conversation was *fresh* and delightful.

9. not tired; vigorous; lively; having new vigor; as, he rose *fresh* for the combat.

10. new; that has lately come or arrived; not known before; as, *fresh* news; *fresh* dispatches.

11. sweet; in a good state; not spoiled, rotten, or stale; as, *fresh* milk.

12. not salted, preserved, pickled, etc.; as, *fresh* meat.

13. unpracticed; inexperienced; not before employed; as, a *fresh* hand on board ship.

14. not worn, soiled, faded, etc.; vivid; bright; clean; as, *fresh* linen.

15. additional; further; as, he made a *fresh* start.

16. designating or of a cow that has newly come into the state of a milker, as after having borne a calf.

fresh out of; having just sold or used up. [Slang.]

Syn.—brisk, strong, vigorous, lively, unimpaired, unfaded, florid, ruddy, new, novel, recent, rare, unpracticed, unaccustomed, unused, inexperienced.

fresh, *a.* [from G. *frsch*, bold, impudent.]

1. bold; saucy; impertinent; impudent. [Slang.]

2. drunk; tipsy. [Slang.]

fresh, *n.* 1. a freshet; a stream in overflow.

2. a spring of fresh water flowing into a river or into the ocean.

3. the mingling of fresh water with turbid or with salt water, especially the mingling of the waters of a river or brook with the salt water of a bay or estuary.

4. a freshman. [College Slang.]

fresh'en, *v.t.*; *freshened*, *pt.*, *pp.*; *freshening*, *ppr.* 1. to make fresh; to separate from saline particles; as, to *freshen* water, fish, or meat.

2. to refresh; to revive.

3. in nautical usage, to apply new service to (a cable); as, to *freshen* the hawes.

to *freshen* ballast; to readjust ballast.

to *freshen* the hawse; to pay out or take in a little of the cable of a vessel at anchor, so as to expose another part of it to the fraying action at the hawse hole.

to *freshen* the way; to increase the speed, as of a ship in motion.

fresh'en, *v.i.* 1. to grow or become fresh.

2. to have a calf; said of a cow.

3. to come into milk.

fresh'et, *n.* 1. a flood or overflowing of a river, on account of heavy rains or melted snow.

2. a stream or rush of fresh water flowing into the sea.

fresh'look'ing, *a.* appearing fresh.

fresh'ly, *adv.* 1. in a fresh manner.

2. recently; just now; newly.

fresh'mān, *n.*; *pl.* **fresh'mēn**, 1. a novice; a beginner.

2. a student of the first year in a college or high school.

3. a person in his first year at any enterprise; as, Senator Smith is a *freshman* in Congress.

fresh'mān, *a.* of or for first-year students; as, the *freshman* curriculum.

Lord! how the seniors knocked about The *freshman* class of one! —Holmes.

fresh'mān-ship, *n.* the state of a freshman.

fresh'ness, *n.* the condition or quality of being fresh, in any sense of the word.

fresh'-new, *a.* unpracticed. [Obs.]

fresh'-wa'tēr, *a.* 1. accustomed to sail on fresh water only; as, a *fresh-water* sailor.

2. raw; unskilled; inexperienced; as, *fresh-water* soldiers.

3. in or of the hinterland; inland.

4. somewhat provincial, obscure, etc.; as, a *fresh-water* college.

5. pertaining to, produced by, or living in water that is fresh, or not salt; as, *fresh-water* geological deposits, *fresh-water* fish.

fres-i'sōn, *n.* in logic, one of the valid modes.

fret, *n.* a strain. [Obs.]

fret, *v.t.*; *fretted*, *pt.*, *pp.*; *fretting*, *ppr.* [ME. *fretten*; AS. *fretan*, contr. of *foretan*, to eat up, devour; for-, and *etan*, to eat.]

1. to wear away by gnawing, rubbing, chafing, corroding, rusting, etc.; also, to make or form by wearing away.

2. to gnaw; to eat away; as, a worm *frets* the planks of a ship.

3. to agitate; to disturb; to make rough; to cause to ripple; as, to *fret* the surface of water.

4. to tease; to irritate; to vex; to make angry.

Fret not thyself because of evildoers. —Ps. xxxvii. 1.

5. to devour. [Obs.]

Syn.—chafe, gall, vex, anger, gnaw, corrode, rub, agitate, disturb.

fret, *v.i.* 1. to gnaw (*into*, *on*, or *upon*).

2. to be worn away; to be corroded, worn, frayed, etc.; as, any substance will in time *fret* away by friction.

3. to be agitated; to become rough or disturbed.

4. to be vexed; to be chafed or irritated; to be annoyed or querulous; to worry.

He *frets*, he fumes, he stares, he stamps the ground. —Dryden.

fret, *n.* 1. the agitation of the surface of a fluid, as when boiling, fermenting, etc.

2. a wearing away.

3. a worn place.

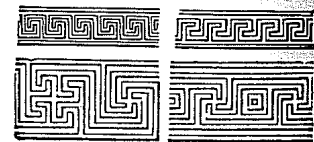
4. irritation; annoyance; worry.

5. in mining, the washed side of a river bank, showing outcroppings by means of which miners are able to locate veins of ore.

6. a cutaneous eruption, as tetters; a chafing, as in the folds of the skin of fat children.

fret, *v.t.*; *fretted*, *pt.*, *pp.*; *fretting*, *ppr.* [OFr. *fretter*, *fretler*, to cross, interlace, from *fretle*, an iron band, ferrule, from LL. *ferrala*, an iron grating.] to ornament with a fret or fretwork.

fret, *n.* [OFr. *fretle*, an iron band, ferrule, from LL. *ferrala*, an iron grating, iron railing, from L. *ferrum*, iron.]



GRECIAN FRETS

1. an ornamental net or network, especially one formerly worn by women as a headdress.

2. an ornamental pattern of small, straight bars intersecting or joining one another at right angles to form a regular design, as for a border.

3. in architecture, an ornamental pattern of this kind in relief; fretwork.

4. in heraldry, a transverse cross interlaced with a hollow, diamond-shaped figure.

fret, *n.* [Fr., a band, a ring, from OFr. *fretter*, to make fast.]

1. any of several narrow, lateral ridges fastened across the finger board of a banjo, guitar, mandolin, etc., to regulate the fingering.

2. a caul of gold or silver wire worn by ladies in the middle ages.

fret, *v.t.* to furnish with frets.

fret'ful, *a.* disposed to fret; ill-humored; peevish; angry; in a state of vexation; as, a *fretful* temper.

Syn.—peevish, cross, captious. —*Peevish* marks the inward spirit, and *fretful* the outward act, while both imply a complaining impatience. *Crossness* is peevishness mingled with vexation or anger.

fret'ful-ly, *adv.* peevishly; angrily.

fret'ful-ness, *n.* peevishness; ill-humor; disposition to fret and complain.

fret saw, a saw with a long, narrow, fine-toothed blade, for cutting thin wooden boards or metal plates into patterns.

frette, *n.* [Fr., a hoop.] a hoop of steel or wrought iron for strengthening the outside of a cannon or gun.

fret'ted, [past tense and past participle of *fret* (to ornament).] *a.* decorated with frets.

fret'ted, [past tense and past participle of *fret* (to vex).] *a.* 1. away; chafed.

2. worried; anxious; discontented.

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Library of Congress Cataloging in Publication Data
Main entry under title:

Webster's third new international dictionary of the English language,
unabridged: a Merriam-Webster/editor in chief, Philip Babcock
Gove and the Merriam-Webster editorial staff.

p. cm.
ISBN 0-87779-201-1 (blue sturdite).—ISBN 0-87779-202-X
(carrying case). — ISBN 0-87779-206-2 (imperial buckram).

I. English language—Dictionaries. I. Gove, Philip Babcock,
1902–1972. II. Merriam-Webster, Inc.
PE1625.W36 1993
423–dc20

93-10630
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